

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97445; File No. SR-CBOE-2023-023)

May 5, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Renew an Existing Pilot Program Until November 6, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 2023, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to renew an existing pilot program until November 6, 2023. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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**Rules of Cboe Exchange, Inc.**

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**Rule 4.13. Series of Index Options**

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

(a)-(d) No change.

(e) Nonstandard Expirations Pilot Program.

(1)-(2) No change.

(3) Duration of Nonstandard Expirations Pilot Program. The Nonstandard Expirations Pilot Program shall be through [May 8]November 6, 2023.

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The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 14, 2010, the Securities and Exchange Commission (the "Commission") approved a Cboe Options proposal to establish a pilot program under which the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.<sup>5</sup> On

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<sup>5</sup> See Securities Exchange Act Release 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR-CBOE-2009-075).

January 14, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Wednesday of month, other than those that coincide with an EOM.<sup>6</sup> On August 10, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Monday of month, other than those that coincide with an EOM.<sup>7</sup> On April 12, 2022, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled SPX options to also expire on Tuesday or Thursday.<sup>8</sup> On September 15, 2022, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled XSP options to similarly expire on Tuesday or Thursday.<sup>9</sup> Under the terms of the Nonstandard Expirations Pilot Program (“Program”), Weekly Expirations and EOMs are permitted on any broad-based index that is eligible for regular options trading. Weekly Expirations and EOMs are cash-settled and have European-style exercise. The proposal became effective on a pilot basis for a period of fourteen months that commenced on the next full month after approval was received to establish the Program<sup>10</sup> and was subsequently extended.<sup>11</sup> Pursuant to Rule 4.13(e)(3), the Program is scheduled to expire on November 7,

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<sup>6</sup> See Securities Exchange Act Release 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (order approving SR-CBOE-2015-106).

<sup>7</sup> See Securities Exchange Act Release 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (order approving SR-CBOE-2016-046).

<sup>8</sup> See Securities Exchange Act Release 94682 (April 12, 2022) (order approving SR-CBOE- 2022-005).

<sup>9</sup> See Securities Exchange Act Release 95795 (September 21, 2022) (order approving SR-CBOE- 2022-039).

<sup>10</sup> See supra note 7.

<sup>11</sup> See Securities Exchange Act Release 65741 (November 14, 2011), 76 FR 72016 (November 21, 2011) (immediately effective rule change extending the Program through February 14, 2013). See also Securities Exchange Act Release 68933 (February 14, 2013), 78 FR 12374 (February 22, 2013) (immediately effective rule change extending

2022. The Exchange believes that the Program has been successful and well received by its Trading Permit Holders and the investing public during that the time that it has been in operation. The Exchange hereby proposes to extend the Program until November 6, 2023.<sup>12</sup> This proposal does not request any other changes to the Program.

Pursuant to the order approving the establishment of the Program, two months prior to the conclusion of the pilot period, Cboe Options is required to submit an annual report to the Commission, which addresses the following areas: Analysis of Volume & Open Interest; Monthly Analysis of Weekly Expirations & EOM Trading Patterns; Provisional Analysis of Index Price Volatility; and, for SPX and XSP options specifically, certain market quality data.<sup>13</sup>

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the Program through April 14, 2014); 71836 (April 1, 2014), 79 FR 19139 (April 7, 2014) (immediately effective rule change extending the Program through November 3, 2014); 73422 (October 24, 2014), 79 FR 64640 (October 30, 2014) (immediately effective rule change extending the Program through May 3, 2016); 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (extending the Program through May 3, 2017); 80387 (April 6, 2017), 82 FR 17706 (April 12, 2017) (extending the Program through May 3, 2018); 83165 (May 3, 2018), 83 FR 21316 (May 9, 2018) (SR-CBOE-2018-038) (extending the Program through November 5, 2018); 84534 (November 5, 2019), 83 FR 56119 (November 9, 2018) (SR-CBOE-2018-070) (extending the Program through May 6, 2019); 85650 (April 15, 2019), 84 FR 16552 (April 19, 2019) (SR-CBOE-2019-022) (extending the Program through November 4, 2019); 87462 (November 5, 2019), 84 FR 61108 (November 12, 2019) (SR-CBOE-2019-104) (extending the Program through May 4, 2020); 88673 (April 16, 2020), 85 FR 22507 (April 22, 2020) (SR-CBOE-2020-035) (extending the Program through November 2, 2020); 90262 (October 23, 2020) 85 FR 68616 (October 29, 2020) (SR-CBOE-2020-101); 91697 (April 28, 2021), 86 FR 23775 (May 4, 2021) (SR-CBOE-2021-026) (extending the Program through November 1, 2021); 93459 (October 28, 2021), 86 FR 60663 (November 3, 2021) (SR-CBOE-2021-063) (extending the Program through May 2, 2022); 94800 (April 27, 2022) 87 FR 26248 (May 3, 2022) (SR-CBOE-2022-021) (extending the Program through November 7, 2022); and 96223 (November 3, 2022), 87 FR 67728 (November 9, 2022) (SR-CBOE-2022-055) (extending the Program through May 8, 2023).

<sup>12</sup> The Exchange recently proposed to make the pilot program permanent. See Securities Exchange Act Release No. 97371 (April 25, 2023) (SR-CBOE-2023-020).

<sup>13</sup> The SPX and XSP options market quality data includes time-weighted relative quoted spreads, relative effective spreads and time-weighted bid and offer sizes, over sample periods determined by the Exchange and the Commission.

The Exchange has submitted, under separate cover, the annual report in connection with the present proposed rule change. Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously submitted to the Commission under the Program,<sup>14</sup> and will make public any data and analyses it makes to the Commission under the Program in the future.

If the Exchange were to propose an additional extension of the Program, the Exchange will submit an annual report (addressing the same areas referenced above and consistent with the order approving the establishment of the Program) to the Commission at least two months prior to the next bi-annual expiration date of the Program.<sup>15</sup> The Exchange will also make this report public. Any positions established under the Program will not be impacted by the expiration of the Program.

The Exchange believes there is sufficient investor interest and demand in the Program to warrant its extension. The Exchange believes that the Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the Program.

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<sup>14</sup> Available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/non-standard-expiration-data>.

<sup>15</sup> The Exchange notes that from the Program's implementation in 2010 through 2014, the Program ran on a 14-month basis, and, in 2014, the Program was extended to run on a bi-annual pilot basis. See Securities Exchange Act Release No. 71836 (April 1, 2014), 79 FR 19139 (April 7, 2014) (SR-CBOE-2014-027). The Program continues to run on a bi-annual basis today.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>16</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the Program has been successful to date and states that it has not encountered any problems with the Program. The proposed rule change allows for an extension of the Program for the benefit of market participants. Additionally, the Exchange believes that there is demand for the expirations offered under the Program and

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> Id.

believes that that Weekly Expirations and EOMs will continue to provide the investing public and other market participants increased opportunities to better manage their risk exposure.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>21</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>22</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Program prior to its expiration on May 8, 2023, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Program. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>23</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2023-023 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2023-023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in

submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CBOE-2023-023, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

J. Matthew DeLesDernier,  
Deputy Secretary.

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<sup>24</sup> 17 CFR 200.30-3(a)(12), (59).